FILED
SEP 17 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-288

LOCAL 1426, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

WILMINGTON SHIPPING COMPANY, HEIDE COMPANY, A Division of LUCKENBACH STEAMSHIP COMPANY, INC., INTERNATIONAL SHIPPING COMPANY and PALMETTO SHIPPING COMPANY OF NORTH CAROLINA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

THOMAS W. GLEASON
Counsel for Petitioner
International Longshoremen's
Association, AFL-CIO
17 Battery Place
New York, New York 10004

THOMAS W. GLEASON
IRWIN HERSCHLAG
RICHARD H. KAPP
of Counsel

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	
A. The Factual Background	2
B. Proceedings Below	3
Reasons for Granting the Writ	5
Conclusion	9
Appendix A (Judgment of the Court of Appeals)	10
Appendix B (Statute Involved)	14

TABLE OF CASES

Amstar Corp. v. *Amalgamated Meat Cutters,* 468 F.2d 1372 (5th Cir. 1972) 5, 6, 7, 8

Boys' Market v. *Retail Clerks Union,* 398 U.S. 235 (1970) 4, 5, 7, 8

Chicago and Northern Railway Company v. *United Transportation Union,* 402 U.S. 570 (1971) 8

Monongahela Power Co. v. *Local No. 2332, International Brotherhood of Electrical Workers,* AFL-CIO, CLC, 484 F.2d 1209 (4th Cir. 1973) 5, 8

Morton Salt Company v. *NLRB,* 472 F.2d 416 (9th Cir. 1972) 7

PAGE

NAPA Pittsburgh Inc. v. *Teamsters Local 926*, —— F.2d —— (3 Cir. August 8, 1974) 5, 6

Pilot Freight Carriers v. *Teamsters*, 497 F.2d 311 (4th Cir. 1974) 5

United States v. *United Mine Workers of America*, 330 U.S. 258 (1946) 5

STATUTES CITED

28 U.S.C. § 1254(1) 2

29 U.S.C. § 101 *et seq.* 4, 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

LOCAL 1426, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

WILMINGTON SHIPPING COMPANY, HEIDE COMPANY, A Division of LUCKENBACH STEAMSHIP COMPANY, INC., INTERNATIONAL SHIPPING COMPANY and PALMETTO SHIPPING COMPANY OF NORTH CAROLINA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, International Longshoremen's Association Local 1426, AFL-CIO (Local 1426), respectfully requests that a Writ of Certiorari issue to review the judgment and opinion entered in this proceeding on June 19, 1974 by the United States Court of Appeals for the Fourth Circuit. That Judgment upheld an injunction restraining defendant labor union from honoring and refusing to cross a picket line.

The Respondents herein are Wilmington Shipping Company, Heide Company, a Division of Luckenbach Steamship Company, Inc., International Shipping Company and Palmetto Shipping Company of North Carolina.

Opinion Below

The opinion of the Fourth Circuit, rendered on June 19, 1974 is reported at 463 F.2d 1, reprinted in the Appendix A hereto at pp. 11-13.

Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Question Presented

Does a Court of the United States have jurisdiction notwithstanding § 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 104, to issue an injunction requiring a union to cross a picket line pending arbitration of the status of the picket line?

Statute Involved

This case involves § 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 104. This provision is reprinted in Appendix B, p. 14, *infra*.

Statement of the Case

A. The Factual Background

Petitioner, Local 1426, International Longshoremen's Association, AFL-CIO ("Local 1426") is a labor organization which represents certain longshore employees in the Port of Wilmington, North Carolina. Respondent, Wilmington Shipping Company, et al. (Wilmington), is an employer of longshore labor at the facilities of the North Carolina State Ports Authority (Authority), at Wilmington, North Carolina.

Employees of the Authority, among other duties, load and unload railroad cars. In unloading railroad cars, cargo destined for export is placed at a point of rest by the

Authority employees and is then moved by longshoremen from the place of rest and loaded on ship. With respect to import cargo, the reverse is true.

The employees of the Authority, unable to negotiate a contract, began to picket the premises of the Authority at which they, as well as the longshoremen, were employed.

The longshoremen relying upon a provision of their collective bargaining agreement with Wilmington, refused to cross the picket line of the Authority's employees. The provision relied upon by the longshoremen provides:

> "15. (A) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union."

> "15. (B) Matters under dispute which cannot be promptly settled between the local and an individual employer shall no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee."

B. Proceedings Below

Wilmington sought and obtained a temporary restraining order, *inter alia*, from engaging in any strike or work stoppage. Respondent claimed that the refusal of longshoremen to cross the picket line was a violation of the

no-strike clause of the contract, *supra*, notwithstanding the express provision giving longshore employees the right not to cross a "*bona fide*" picket line. Wilmington asserted that the picket line was not "*bona fide*", thereby creating an issue to be resolved by arbitration. The District Court in granting the temporary restraining order pending arbitration* relied upon *Boys Market, Inc. .. Retail Clerks Union*, Local 770, 398 U.S. 235, to except this case from the anti-injunction restriction of the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.*

Although directed to return to work by the President of Local 1426, longshoremen still refused to cross the picket line established by the Authority's employees.

Wilmington then moved that Local 1426 be adjudged in contempt of Court for violation of the temporary restraining order. The District Court granted the motion and fined Local 1426 up to Five Thousand ($5,000.00) Dollars for each day or fraction thereof that the violation of the temporary restraining order continued.

After a hearing on Respondent's motion for a preliminary injunction, the District Court continued the temporary restraining order, in effect, as a preliminary injunction. On the merits the Court ruled that it was empowered to issue such injunction notwithstanding § 4 of the Norris-LaGuardia Act. A motion to stay the preliminary injunction was denied.

Local 1426 noticed an appeal of the preliminary injunction to the Court of Appeals in the Fourth Circuit. This

---

* Local 1426, prior to the granting of the temporary restraining order, conceded that the matter was arbitable. Pursuant to the District Court's Order the matter was submitted to arbitration. In his award, the arbitrator found that the picket line of the Authority's employee's was, in fact, "bona fide". However, he also found that the longshoremen could have entered the Authority's premises without having to "cross" said picket line. Thus, the longshoremen who refused to enter the Authority's premises were in violation of the collective bargaining agreement.

Court affirmed the District Court's decision and found that until the issue of the "bona fides" of the picket line was resolved, the preliminary injunction was properly granted. The Court of Appeals relied upon the authority of *Boys Market, supra,* and *Monongahela Power Co.* v. *Local No. 2332, IBEW,* 484 F. 2d 1209 (4 Cir. 1973). And, the Court found no error in the District Court's imposition of a civil fine upon Local 1426. *United States* v. *United Mine Workers of America,* 330 U.S. 258 (1946).

Reasons for Granting the Writ

The *Per Curiam* decision of the Court below concerns a question of law that has constant and continuing importance. It is based upon an earlier decision in the Fourth Circuit[1] which conflicts with a decision of the Fifth Circuit.[2] This Fourth Circuit decision is inconsistent with a decision of the Third Circuit.[3]

Monongahela Power Co. v. *Local 2332, IBEW,* 484 F.2d 1209 (4th Cir. 1973), is the authority cited by the Court of Appeals below for its decision in the case *sub judice* as well as for *Pilot Freight Carriers* v. *Teamsters,* 497 F.2d 311 (4th Cir. 1974) Petition for Certiorari Case No. 74-48. *Monongahela* held that the right of a union to honor the picket line of a sister union came under the *Boys Market* exception to the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.* The Court found that the "work stoppage" resulting from employees' refusal to cross a picket line was a grievance over which the employer had a right to arbitration.

In *Monongahela* there was no express language in the agreement protecting employees' right to honor picket lines.

---

[1] *Monongahela Power Co.* v. *Local 2332, IBEW,* 484 F. 2d 1209 (4th Cir. 1973).

[2] *Amstar Corp.* v. *Amalgamated Meat Cutters,* 468 F.2d 1572 (5th Cir. 1972).

[3] *NAPA Pittsburgh Inc.* v. *Teamsters Local 926,* —— F.2d —— (3rd Cir. August 8, 1974).

In the case *sub judice* the collective bargaining agreement provides that:

> "The right of employees not to cross a *bona fide* picket line is recognized by the employer."

The employer demanded arbitration of the *bona fides* of the picket line and obtained an order:

> "That the Defendant, its officers, agents, representatives and members be and they are hereby temporarily restrained from engaging in any strike or work stoppage and are directed to cease refusing to perform longshore work for the Plaintiffs in accord with the labor contract and to specifically perform the arbitration agreement set forth in said contract".

This temporary restraining order was continued as the preliminary injunction upheld by the Court below.

In the Fourth Circuit, then, a union does not protect itself from an injunction by winning the right to honor picket lines. Indeed this victory at the bargaining table may turn to ashes because the clause itself appears to be a material fact supporting an injunction in the Third Circuit.

In *NAPA Pittsburgh Inc.* v. *Teamsters Local 926*, —— F.2d —— (3rd Cir. August 8, 1974), the Court reconciled its affirmance of an injunction with the holding in *Amstar Corp.* v. *Amalgamated Meat Cutters*, 468 F.2d 1372 (5th Cir. 1972). It did so on ground that in *Amstar* there was no "contractual provision restricting the union's right to honor the line of other labor organizations". The Court went on to state that:

> "By way of contrast, the Court of Appeals in *Monongahela Power Co.* v. *IBEW*, 484 F.2d 1209 (4th Cir. 1973), held that an injunction could be issued to enforce a no-strike clause in a contract even though it had no provision applicable to honoring a picket line of another union". —— F.2d ——, ——

While the absence of a "right to honor picket lines" clause was relied upon in *NAPA*, it was not mentioned as a dispositive fact in the *Amstar* opinion. Nor did Judge Adams, in his concurring opinion, in the case *sub judice*, give any weight to the presence of that clause. Rather, he "reluctantly" followed the Fourth Circuit position, i.e. *Monongahela*, even though in his opinion he stated:

> "Cases like *Amstar* v. *Amalgamated Meat Cutters* [supra] appear to reflect more accurately the nature of harmonization between conflicting federal policy thus achieved in *Boys Market*".

It is the "no-strike obligation" that *Boys Market* considers "the *quid pro quo* for an undertaking by the employer to submit grievances and disputes to the process of arbitration" pp. 247-248. The nature of the harmonization achieved in *Boys Market* suggests that the exception to the Norris-LaGuardia Act should be limited to disputes arising out of working conditions and other circumstances of the employee-employer relationship.

The right to honor a picket line is clearly distinguishable from the no-strike obligation. *Morton Salt Company* v. *NLRB*, 472 F.2d 416, 420-421. *Amstar* (at p. 1373) makes that distinction:

> "The strike by the [picketing] employees was not 'over a grievance' which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute—the validity under the Union's no-strike obligation of the member-employees honoring the ILA picket line. Were we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a *Boys Market* injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The *Boys Market* holding was 'a narrow one,' not intended to undermine the vitality of the

> anti-injunction provision of the Norris-LaGuardia Act. Indeed, the Supreme Court specifically stated that its decision did not mean 'that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance.' "

Amstar (Fifth Circuit) conforms more closely to the decision in *Boys Market* than do the decisions in *NAPA* (Third Circuit) and *Monongahela* (Fourth Circuit). As noted in Judge Hunter's dissent in *NAPA:*

> "In our opinion, the holding in [Boys Market] permits the issuance of injunctions to end work stoppage only when an arbitrable dispute is an *underlying* cause of the strike." (emphasis supplied) —— F.2d ——, ——

Many labor contracts, including those of Petitioner, are in effect in several circuits or, indeed nationwide. The guidance the courts now provide "falls far short of that definiteness and clarity which businessmen and labor leaders undoubtedly desire". *Chicago and Northwestern Railway Company* v. *United Transportation Union,* 402 U.S. 570, 583. What is far worse is that *Boys Market* may have provided "a cover for free-wheeling judicial interference in labor relations of the sort that called forth the *Norris-LaGuardia Acts* in the first place" *id.*

CONCLUSION

Because of the conflicts and inconsistencies among the decisions in the Third, Fourth and Fifth Circuits, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

THOMAS W. GLEASON
Counsel for Petitioner
International Longshoremen's
Association, AFL-CIO
17 Battery Place
New York, New York 10004

THOMAS W. GLEASON
IRWIN HERSCHLAG
RICHARD H. KAPP
of Counsel

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2354

WILMINGTON SHIPPING COMPANY; HEIDE COMPANY, a Division of LUCKENBACH STEAMSHIP COMPANY, INC.; INTERNATIONAL SHIPPING COMPANY; and PALMETTO SHIPPING COMPANY OF NORTH CAROLINA,

Appellees,

versus

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1426,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT WILMINGTON. J. BRAXTON CRAVEN, JR. (by designation sitting as a district judge).

Argued April 3, 1974. Decided June 19, 1974

Before HAYNSWORTH, Chief Judge, ADAMS* and BUTZNER, Circuit Judges.

JULIUS MILLER (A. A. CANOUTAS and GLEASON and MILLER, THOMAS W. GLEASON and RICHARD KAPP on brief) for Appellant; DANIEL LEE BRAWLEY (ALAN A. MARSHALL, MARSHALL, WILLIAMS, GORHAM and BRAWLEY, J. W. ALEXANDER, JR., and BLAKENEY, ALEXANDER and MACHEN on brief) for Appellees.

* Honorable Arlin M. Adams, United States Circuit Judge for the Third Circuit, sitting by designation.

Appendix A

PER CURIAM:

Employees of the North Carolina Port Authority struck against the Authority and picketed the Port of Wilmington, North Carolina. Longshoremen employed by Wilmington Shipping Company refused to cross the picket lines pursuant to a clause in the collective bargaining agreement between the Union and Wilmington which provides: "The right of employees not to cross a bona fide picket line is recognized by the employer."

Wilmington instituted this action to enjoin the longshoremen from refusing to cross the picket line, claiming that the picket line was not bona fide, and that the refusal to cross the picket line was not protected activity under the contract. It further argued that, as a minimum, the validity of the picket line was an issue for arbitration. On September 12, 1973, Judge Dupree granted an order temporarily restraining the longshoremen from respecting the picket lines. Because the longshoremen did not return to work, Judge Dupree, on September 14, held the Union in contempt, and fined it $5,000 per day, or the actual loss suffered by Wilmington, whichever was less. On September 21, Judge Craven, sitting as a district judge, made the TRO a preliminary injunction on the authority of *Boys Market* v. *Retail Clerks Union*, 398 U.S. 235 (1970) and *Monongahela Power Co.* v. *Local No. 2332*, IBEW, 4 Cir., 484 F.2d 1209.

The Union attempts to distinguish *Monongahela* by focusing on the lack of a reservation of a right-not-to-cross-picket-lines clause in that case. The court in *Monongahela* held that whether the no-strike clause permitted employees to refuse to cross picket lines was a matter of construction of the no-strike clause, and thus, was an arbitrable issue. It held that, accordingly, an injunction could lie under *Boys Market* enjoining the employees from respecting the picket line, pending arbitration. In this case, however, while the contract gives the longshoremen the right to respect bona fide picket lines, there is a factual dispute

over the bona fides of this picket line. Everyone agrees the factual dispute is arbitrable under the contract. Until that issue is resolved in arbitration, it is an open question whether observance of the picket line is authorized by the contract.

Since the validity of the picket line is an arbitrable issue, *Monongahela* controls.

We also find no error in the district court's imposition of a civil fine upon the Union. *United States* v. *United Mine Workers of America*, 330 U.S. 258.

AFFIRMED.

ADAMS, Circuit Judge, concurring:

Monongahela Power Co. v. Local No. 2332[1] appears to hold that the scope of a union's no-strike commitment can give rise to an arbitrable dispute warranting judicial intervention in the form of a labor injunction. Since the situation in the instant case seems to fall within the parameters of this Court's pronouncements in *Monogahela*, I am constrained to concur in the result reached by the majority.

I do so reluctantly, however, because, in my judgment, the decision in *Monongahela* is inconsistent with the careful balance wrought by the Supreme Court in Boys Markets v. Retail Clerks Union, Local 770.[2] In that case, the Court permitted narrowly defined inroads into the proscriptions against the issuance of labor injunctions by federal courts contained in the Norris-LaGuardia Act in order to accommodate the strong Congressional policy in favor of arbitration. Cases like *Amstar* v. *Amalgamated Meat Cutters*[3] appear to reflect more accurately the nature of harmonization between conflicting federal policies thus achieved in *Boys Markets*.

---

[1] 484 F.2d 1209 (4th Cir. 1973).
[2] 398 U.S. 235 (1970).
[3] 468 F.2d 1372 (5th Cir. 1972).

APPENDIX B

Statutory Provision Involved.

Section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 104 provides:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.